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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,895	10/17/2003	Anthony Wong	20341-72628	9808
23643	7590	10/05/2004	EXAMINER PRUCHNIC, STANLEY J	
BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,895

Applicant(s)

WONG, ANTHONY

Examiner

Stanley J. Pruchnic, Jr.

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 11, 15-19, 21 and 22 is/are rejected.
- 7) ☒ Claim(s) 12-14 and 20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/21/03 (3sheets).
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

1. The references listed in the information disclosure statement (IDS) or PTO-1449 submitted by Applicant on 18 November 2003 (and received 21 November 2003) are acknowledged. The cited references have been considered as indicated by the examiner's initials next to each reference considered.
2. The information disclosure statement filed 28 April 2004 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

3. The disclosure is objected to because of the following informalities: On Page 4, in Line 7, after "Application", please insert --No. 10/688,334-- and the current status of the related application.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11, 15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by JANOTTE (U. S. Patent No. 6,097,979).

JANOTTE discloses an infrared ear thermometer comprising

a housing 10,

a storage unit (magazine 30) formed to define a cavity adapted to receive a disposable probe cover 40 therein, and

means for coupling the storage unit to the housing to enable a user to remove the storage unit from the housing, and further regarding claim 18: the means for coupling includes a detent formed within a bottom portion of the housing and a notch formed within the storage unit to receive the detent of the housing therein (Col. 2, Lines 24-28) as claimed by Applicant in claims 11 and 18.

JANOTTE further discloses the disposable probe cover 40 stored within the cavity (Fig. 1) of the storage unit 33 as claimed by Applicant in claim 15.

6. Claims 19, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by **CANFIELD** (U. S. Patent No. 6,001,066 A).

CANFIELD discloses an infrared ear thermometer comprising an infrared ear thermometer 500 (Figs. 22A-22E) comprising a housing 500 and probe 30 coupled to the housing, a storage unit 514 coupled to the housing, a probe-cover dispenser (a cluster of probe covers 32; Col. 33, Lines 50-55) contained within the storage unit 514, and a probe cover applicator (cap 515) coupled to the storage unit and configured to retain a probe cover to allow a user to position a probe cover 32 onto the probe as claimed by Applicant in Claim 19.

Further regarding Claim 21: CANFIELD discloses the probe-cover dispenser (see Fig. 22A) includes a bottom wall, side walls each coupled to the bottom wall, and a top wall coupled to the each of the side walls, the top, bottom, and side walls cooperating to define a cavity adapted to store one or more probe covers therein, and the probe-cover dispenser further includes an opening formed through the top wall for communication with the cavity and adapted to dispense a probe cover therethrough.

Regarding Claim 22: CANFIELD discloses a method of attaching a disposable probe cover to an infrared ear thermometer comprising

removing a storage unit (a cluster of probe covers 32; Col. 33, Lines 50-55) of the infrared ear thermometer from a housing of the infrared ear thermometer,

removing a probe-cover dispenser contained within the storage unit,

removing a disposable probe cover from within the dispenser,

placing the disposable probe cover over an aperture (by closing the cap 515) of the storage unit, and

inserting a probe 30 of the infrared ear thermometer into the aperture of the storage unit to cause the disposable probe cover 32 to attach to the probe of the infrared thermometer as claimed by Applicant in Claim 22.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over JANOTTE as applied to claims 11, 15 and 18 above, and further in view of SUSZYNSKI *et al.* (U. S. Patent No. 4,993,424, hereinafter SUSZYNSKI).

Regarding Claims 16 and 17: JANOTTE discloses an infrared ear thermometer including all the limitations claimed by Applicant in Claims 16-17 as described above in Paragraph 5 regarding Claims 11, 15 and 18, and further including probe 20 coupled to the housing 10 and wherein the inner portion of the disposable probe cover is flexible such that the inner portion of the disposable probe cover is substantially able to be formed into the shape of the probe (Col. 4, Lines 10-14), since it they are a plastic which is conformable, and since they are already formed into the shape ("funnel-shaped conical configuration") of the probe (e.g., see Fig. 3) as claimed by Applicant in Claim

17. JANOTTE discloses the disposable probe cover 40 includes an outer portion (rim 44) formed to define an aperture and an inner portion (window 42) coupled to the outer portion (rim 44) and positioned substantially within the aperture.

JANOTTE does not disclose the disposable probe cover is substantially planar as claimed by Applicant in Claim 16.

SUSZYNSKI discloses substantially planar disposable probe covers disposed in a storage unit formed to define a cavity coupled to a housing of an infrared ear thermometer.

SUSZYNSKI further discloses or suggests that it is advantageous to use substantially planar disposable probe covers in order to compactly store the probe covers in the storage cavity.

SUSZYNSKI is evidence that ordinary workers in the field of temperature measurement would recognize the benefit of using substantially planar disposable probe covers as taught by SUSZYNSKI for the conical probe covers of JANOTTE in order to more efficiently use the space for storing the probe covers in the storage cavity.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute substantially planar disposable probe covers for the substantially conical disposable probe covers of JANOTTE in order to more efficiently use the storage space as suggested by SUSZYNSKI.

Allowable Subject Matter

9. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

10. Claims 1-10 are allowed.

11. Claims 12-14 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter:

Claim 1 is allowable because the prior art of record fails to teach or fairly suggest an infrared ear thermometer comprising a storage unit coupled to the housing and formed to define a cavity and an aperture formed through a bottom wall of the storage unit to communicate with the cavity, the aperture being sized to receive a portion of the probe therethrough, as defined in the claim, in combination with the other limitations, each arranged and functioning as recited in claim 1. **Claims 2-10** are allowable by virtue of their dependency upon claim 1.

Claims 12-14 and 20 would be allowable because the prior art of record fails to teach or fairly suggest an infrared ear thermometer wherein the storage unit includes an outer wall and a bottom wall coupled to the outer wall to cooperate with the outer wall to define the cavity and the bottom wall is formed to include an aperture in communication with the cavity as claimed by Applicant in **Claim 12**; or wherein the probe cover applicator includes a bottom wall of the storage unit, an aperture formed through the bottom wall to communicate with a cavity of the storage unit, and an outer rim coupled to the bottom wall to cooperate with the bottom wall to define an area adapted to receive a probe cover as claimed by Applicant in **Claim 20**, as defined in the claims, in combination with the other limitations, each arranged and functioning as recited in the respective of claims 12 and 20.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in a form PTO-892 and not mentioned above disclose related temperature measurement devices and methods.

Art Unit: 2859

- US 20040016766 A1 (Lin, Kevin et al.)
- US 6030117 A (Cheslock, Edward P. et al.)
- US 5935058 A (Makita, Shigeru et al.)
- US 5638951 A (Fukura, Masashi et al.)
- US 5271407 A (Pompei, Francesco et al.)
- US 5100018 A (Rosati, Robert J. et al.)
- US 4784149 A (Berman, Herbert L. et al.)

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stanley J. Pruchnic, Jr., whose telephone number is **(571) 272-2248**. The examiner can normally be reached on weekdays (Monday through Friday) from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. F. Gutierrez can be reached at **(571) 272-2245**.

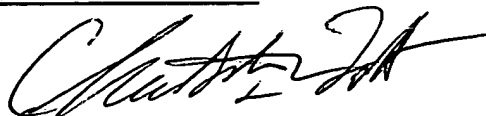
The **Official FAX** number for Technology Center 2800 is **(703) 872-9306** for **all official communications**.

Any inquiry of a general nature or relating to the status of this application or proceeding may be directed to the official USPTO website at **<http://www.uspto.gov/>** or you may call the **USPTO Call Center** at **800-786-9199** or 703-308-4357. The Technology Center 2800 Customer Service FAX phone number is (703) 872-9317.

The cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site (**www.uspto.gov**), from the Office of Public Records and from commercial sources.

Private PAIR provides external customers Internet-based access to patent application status and history information as well as the ability to view the scanned images of each customer's own application file folder(s).

For inquiries relating to Patent e-business products and service applications, you may call the **Patent Electronic Business Center (EBC)** at **703-305-3028** or toll free at **866-217-9197** between the hours of **6 a.m. and midnight Monday through Friday EST**, or by e-mail at: **ebc@uspto.gov**. Additional information is available on the Patent EBC Web site at: **<http://www.uspto.gov/ebc/index.html>**.



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9/30/04

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